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HAROLD B. WILLEY

IN THE

# SUPREME COURT

OF THE

# United States

**October Term, 1953**

In the Matter of the LOS ANGELES COUNTY PIONEER SOCIETY, a Corporation in the Process of Voluntarily Winding Up,
*Petitioner and Appellant,*
vs.
THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA,
*Respondent and Appellee.*

THE PEOPLE OF THE STATE OF CALIFORNIA, EDMUND G. BROWN, Attorney General, State of California,
*Interveners.*

## ANSWER TO REPLY OF THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA TO THE PETITION FOR WRIT OF CERTIORARI.

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## ANSWER TO REPLY OF THE HISTORICAL SOCIETY OF SOUTHERN CALIFORNIA TO THE PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:*

The Respondents have failed to meet our assignments and our argument in our petition. In the absence

of any legal or other cogent ground why the petition should not be granted, counsel for the Respondents have used epithets and have resorted to criticism of the dissenting justices of the Supreme Court of California for dissenting in a case in which the money of the Pioneer Society has been taken, lock, stock and barrel, and turned over to the Historical Society.

The Respondent says the rules of this court have not been complied with, but he does not point out wherein the rules have not been complied with. His first complaint is that the title does not include "the People, et al., Intervenors and Respondents," to which we take it that he refers to the Attorney General's intervention.

The appeal is from the Order and Judgment turning the money over to the Historical Society, not the Attorney General. The Attorney General which belatedly intervened in the trial court was duly and regularly served in these proceedings with all papers. A copy of the receipt of service by him of this Petition for Certiorari has been mailed to this Court. It has previously appeared in all Appellate proceedings. The Attorney General's office has not, so far as we find, made any reply, although duly served with a copy of our petition. An affidavit by the printers show that a copy of our petition was forwarded to the Attorney General's office as soon as it was printed.

Respondent says the petition contains numerous references such as "minute book in evidence, page 5;

Exhibit K, page 7; Reporter's Transcript, 295, page 8; Clerk's Transcript, page 15, etc., and is replete with other factual statements without indication of the source." We are surprised at these representations being made to this Court. The minute book in evidence was introduced at the trial of the case in the Superior Court. It was also transferred to the Supreme Court of California, pursuant to Rule 10b Rules of the California Supreme Court and the usual procedure in California courts, and was always before the Court and counsel in California, all of which is known as such to Respondent.

The same thing happened with reference to Exhibit K in the State court proceeding. Counsel for Respondent said he could not find "Exhibit K". We had the Clerk make him a photostatic copy and sent it to him. Counsel for the Respondent also received a Reporter's Transcript, and a Clerk's Transcript, the same as counsel for the appellant, and he is well aware that the source is the official court reporter who had transcribed or transmitted all of the documents to the Appellate Court. We did not serve another copy of the Reporter's Transcript on counsel as he has one copy the same as appellant, and we served notice on him of the filing with this Court of the copy of the record in the court below, and we asked him to acknowledge it. This he declined to do, but he has at all times been in the possession of and served with each and all of the papers set forth in our certified record prepared by the Clerk of the Supreme Court except

original exhibits which under California procedure were transferred to the Supreme Court of California and thence to this Court under that Court's certificate. The rules of the Supreme Court of California require such service on opposing counsel in order to file the documents, or the transmittal of original exhibits to the Appellate Court where they are accessible to all counsel.

Therefore, the statements made in the brief in opposition are apparently made to embarrass the Pioneer Society on this appeal and to thwart its efforts to get back the money which was taken from it.

On page 2 of the Respondent's brief, it seeks to criticize two justices of the Supreme Court of California who have been forthright in the support of fundamental rights of litigants. Their dissents have caused this Court to take over such cases as *Rochin vs. California; Phyle vs. Duffy; Adamson vs. People of the State of California,* and other cases in which their voices speak loudly for justice, which this Court heard, and acted upon. We would rather take their word in regard to a case in which they had examined the entire record and studied the law than the opinion of a dottering old man who knows nothing of the facts or the law of the cases he criticizes when the two justices say in this case that justice has miscarried and that it is the worst case of "legalized larceny" that has come to the attention of the writer, we submit that their views are worthy of the attention and favorable action of this Court. If the criticism leveled at the

California justices for dissenting, had any merit at all, that criticism would apply equally to the learned justices of this Court, and to such outstanding justices as Oliver Wendell Holmes, Charles Evans Hughes and Harlan Stone. The use of this sort of attack in Respondent's brief shows its lack of substance on the main issues before this Court.

No argument has been devoted by Respondent to the impairment of the contract of Pioneer Society. The contract which was made between the State of California and Pioneer Society, and Mrs. Staltenberg and Pioneer Society, was that the gift was to the Pioneer Society members. The order of the trial court taking away Pioneer's money from it, gave it to Historical Society for all of the purposes for which Pioneer Society was created. One of those purposes was to have *social intercourse* among the Pioneer Society members. The gift to the Pioneer Society by Mrs. Staltenberg was not a gift for the Historical Society members, yet the trial court orders the money turned over to the Historical Society for social intercourse—a non-charitable purpose (as well as other purposes) among the *Historical Society members,* a gift never contemplated or dreamed of by the donor. Yet, the resolutions of the Historical Society, and the order of the Superior Court turning the money over to it, turned it over to the Historical Society for use among the Historical Society members for all purposes expressed in Pioneer's Charter, which included purposes not charitable and never contemplated by the contract

between Mrs. Staltenberg and the Pioneer Society, and by the State of California and the Pioneer Society. Such proceedings impaired the obligation of the contract between the State and the Pioneer Society, and between the Pioneer Society and Mrs. Staltenberg. The taking was also without due process of law.

Historical Society has not seen fit to answer these arguments nor could it answer these arguments. Hence, it has devoted itself to epithets and invective. It speaks of "evil purposes" and "repudiation of a trust", and "petitioner's colorable procedures".

Pioneer Society went into court and sought the determination of its rights in declaratory relief. Is it a colorable procedure to ask the judge of the court having jurisdiction as to what the rights of a society are? The statement that its actions in declaratory relief was brought against a Mr. Pierce, a participating member, is misleading. The record shows that Mr. Pierce was president of the Society and that a controversy arose as to the rights and duties of the Society to dispense with any of its moneys for charitable purposes or for the benefit of its members. A suit in declaratory relief was then filed against Mr. Pierce, and the matter came on before a Judge Westover, a veteran judge of the Superior, who had retired and who was called back to try the case. Mr. Pierce wrote the Secretary of State that he was opposed to the distribution of any of the assets of Pioneer Society, and a deputy Attorney General, fully advised of the situation, wrote

Mr. Pierce in answer to his letter. These are in the files before this Court.

The Respondent says that "the Attorney General is an indispensable party to such an action". However, there is nothing in California's codes that makes him an indispensable party, and it is presumed that Judge Westover performed his duty properly. Section 389 of the Code of Civil Procedure provides that "When a complete determination of the controversy cannot be had without the presence of other parties, the Court must then order them to be brought in, and to that end may order amended and supplemental pleadings." (Section 389, Code of Civil Procedure of California.) That trial judge found that the Pioneer Society was not a charitable society (as the evidence shows that it was not) and that judgment has never been set aside.

A motion was made by Marshall Simpson, one of the attorneys of Historical Society, to set aside and vacate that judgment of Judge Westover. The motion made the same charges as Respondent does here, but still another judge, Judge Arnold Praeger, after a full hearing of the motion, denied it. No appeal was ever taken from that denial and that judgment and order are final. (*Bernhard v. Bank of America*, 19 Cal. (2d) 807, 811). The statement that Pioneer has persisted in its announced purpose to divert the assets to the private use of its members is a misstatement of the facts shown by the record.

The affidavit of Mr. Pearne, president of the Pioneer Society, shows that, after the second judge, Judge Pope, held that the assets of Pioneer Society were charitable funds, he instructed the attorneys of Pioneer Society to seek abandonment of dissolution proceedings. It shows further that he conferred with the Attorney General and asked the Attorney General handling the case to restore the funds and that he was told it was "too late". Pioneer Society has filed with the Secretary of State of California its resolution to revoke its proceedings to dissolve—this in accordance with Section 4609 of the Corporations Code of the State of California. Yet, the Court has refused to return its money to it, and seeks to give it to Historical Society which, by its resolution, is at large to use it for its own social purposes and its own members.

The decision in this case has a widespread effect upon every social corporation in America. What happened to Pioneer Society could happen to the Masonic Lodge, Elks, or Eagles, or to any corporation meeting socially. This court should grant a hearing and restore its funds to it, taken from it by impairing the obligation of contract and without due process of law guaranteed under the Fourteenth Amendment of the Constitution of the United States.

Counsel for the Respondent have ignored the cogent language of the *Trustees of Dartmouth College vs. Woodward*, 4 Wheat, 514, 4 L. Ed. 629, 17 U. S. 514, 639 (4 L. Ed. 660). The Court there said, regarding

gifts to a private corporation with a charitable purpose:

> "It requires no very critical examination of the human mind to enable us to determine that one great inducement to these gifts is the conviction felt by the giver that the disposition he makes of them is immutable."

The Court points out there that the gift to found colleges would not be made if the corporation constituted no security for the gift and that its funds are to be governed and applied, not by the will of the donor, but by the will of the legislature. The Court found also in the learned Opinion of Chief Justice Marshall that the incorporation was a contract "the obligation of which cannot be impaired without violating the Constitution of the United States." Chief Justice Marshall said, regarding the contract, "By this contract the Crown was bound and could have made no violent alteration in its essential terms, without impairing its obligation." The Chief Justice also pointed out in his Opinion that the trustees of the college or corporation acquired a power coupled with an interest which beneficial interest is vested in such trustees. The Court said, in Chief Justice Marshall's "But the Court has deemed it unnecessary to investigate this particular point being of the opinion, on general principles, that in these private eleemosynary institutions, the body corporate has possessed the whole legal and equitable interest, and completely representing the do-

nors for the purpose of executing the trust has rights which are protected by the Constitution."

Mr. Justice Washington, in a concurring Opinion, points out that a corporation is a franchise and a contract. The corporate charter is a grant and is an express contract between the State and the corporation. He also points out that there is an implied contract.

**Justice Washington stated:**

> **"There is also an implied contract that the founder of a private charity, or his heirs or other persons appointed by him for that purpose shall have the right to visit and to govern the corporation, of which he is the acknowledged founder and patron, and also that in case of its dissolution the reversionary right of the founder to the property with which he had endowed it should be preserved inviolate."**

This language is analagous to the case at bar. While the corporation had been already formed and in existence, she founded the home by giving money toward its purchase. There was an implied contract that she had a right to direct its use and its acceptance upon that basis had to remain inviolate in accordance with the terms of the corporate charter and the statutes then in existence. Those statutes then in existence provided that upon dissolution of such corporation, if it occurred, that the funds could be distributed among its members. It is presumed that Mrs. Stoltenberg knew this at the time of her gift, but if those funds did not

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go to those members who were her friends and associates, then the reversionary rights under the law, as then existed, was to her heirs and "should be preserved inviolate." The learned Justice also said:

> "If a law increases or diminishes the number of the trustees, they are not the persons which the grantor agreed should be the managers of the fund. If it appropriate the fund intended for the support of a particular charity to that of some other charity, or to an entirely different charity, the grant is in effect set aside, and a new contract substituted in its place; thus disappointing completely the intentions of the founder by changing the objects of his bounty. And can it be seriously contended that a law which changes so materially the terms of a contract does not impair it? In short, does not every alteration of a contract, however unimportant, even though it be manifestly for the interest of the party objecting to it, impair its obligation? If the assent of all the parties to be bound by a contract be of its essence, how is it possible that a new contract, substituted for, or engrafted on another, without such assent, should not violate the old charter? . . . Mr. Justice Blackstone, lays it down, that the same identical franchise, that has been before granted to one, cannot be bestowed on another; . . . A charter is a contract, to the validity of which the consent of both parties is essential, and, therefore, it cannot be altered or added to without such consent."

In the case of the Pioneer Society, California has attempted to engraft a charitable corporation requiring twenty-five trustees on a non-profit corporation having only seven, without such assent. This impairs the obligation of the Pioneer Society's contract.

**It also attempts to take all of its funds from it, in which Pioneer has a beneficial interest and its directors are trustees to carry out the terms of the gift and the law as it existed at the time of the gift. If that law provided that upon dissolution the funds were to be distributed to those members or failing that to revert to the heirs of the donor, then that is the specific trust of the directors and a contract which the State cannot impair.**

In *The Trustees of Dartmouth College vs. Woodward,* Justice Washington further states:

> "But it is denied that it has power to repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws; and that it can, by such repeal, vest the property of such corporations in the state, or dispose of the same to such purposes as it may please, without the consent or default of the corporators. Such a law, it is declared, would be repugnant both to the spirit and the letter of the Constitution of the United States."

**The learned Justice also points out that**

> **"The laws in question divest the trustees of Dartmouth College of the property vested in them by**

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the founder, and vest it in the other trustees, for the support of a different institution, called Dartmouth University. In what respects do they differ? Would the difference have been greater in principle if the law had appropriated the funds of the college to the making of turnpike roads, or to any other purpose of a public nature? In all respects in which the contract has been altered without the assent of the corporation its obligations have been impaired; and the degree can make no difference in the construction of the above provision of the constitution."

The Pioneer Society case is similar. California has devested the directors of the Pioneer Society of the property vested in them by Mrs. Stoltenberg and has vested it in the other trustees, the Historical Society, for the support of a different institution called The Historical Society, and has provided that the Historical Society may use the funds for all of the purposes, or otherwise, for which the Pioneer Society could have used the funds.

There is no difference then if California had appropriated the money of Pioneer Society to the making of state highways or any other purpose of a public nature, including a County Hospital. In all respects in which the contract of the Pioneer Society has been altered, without its assent, its obligations have been impaired.

Counsel for the Historical Society does not seek to meet this ground of our request for *certiorari*, for it is obvious that he cannot do so.

In another concurring Opinion by Mr. Justice Story, 4 L. Ed. (Wheat) 668, the learned Justice says that if gifts of private donors for general charity became instantaneously the property of the government and compelled to yield up their rights to whomsoever the government might appoint to administer them, "it would extinguish all future eleemosynary endowments, and we should find as little of public policy as we now find of law to sustain it." He further points out that "it will hardly be contended that even in respect to such corporations, a legislative power is so transcendent that it may at its will take away the private property of the corporation, or change the uses of its private funds acquired under the public faith." He points out that the legislature does not possess the authority to seize upon those funds and appropriate them to other uses at its own arbitrary pleasure, against the will of the donors and donees. The public faith, he says, is pledged the other way and that pledge constitutes a valid contract. He further points out that "a private donation, vested in a trustee for objects of a general nature, does not thereby become a public trust, which the government may, at its pleasure, take from the trustee, and administer in its own way. The truth is, that the government has no power to revoke a grant, even of its own funds, when given to a private person, or a corporation for special uses." Such a grant conveys a legal estate.

The Court further says:

"In respect to corporate franchises, they are, properly speaking, legal estates vested in the corporation itself as soon as it is in esse. They are not mere naked powers granted to the corporation, but powers coupled with an interest. The property of the corporation vests upon the possession of its franchises; and whatever may be thought as to the corporators, it cannot be denied that the corporation itself has a legal interest in them. . . . The corporators are not mere agents, but have vested rights in their character, as corporators. . . . The franchises granted by the charter were vested in the trustees in their corporate character. The lands and other property, subsequently acquired, were held by them in the same manner. They were the private demesnes of the corporation held by it, not, as the argument supposes, for the use and benefit of the people of New Hampshire, but, as the charter itself declare, 'for the use of Dartmouth College.' There were not, and in the nature of things could not be, any other *cestui que* use entitled to claim those funds. . . . Could the legislature of New Hampshire have seized the land given by the state of Vermont to the corporation, and appropriated it to uses distinct from those intended by the charity, against the will of the trustees? This question cannot be answered in the affirmative, until it is established, that the legislature may lawfully take the property of A and give it to B; and if it could not take away or restrain the corporate funds, upon what pretense

> can it take away or restrain the corporate franchises. . . . But there are other rights and privileges belonging to the trustees collectively, and severally, which are deserving of notice. They are entrusted with the exclusive power to manage the funds, to choose the offices, and to regulate the corporate concerns, according to their own discretion. The *jus patronatus* is vested in them. . . .
>
> "May not the founder as justly contract for the possesion of this right in return for his endowment as for any other equivalent. . . . The right is not merely a collective right in all the trustees; each of them also has a franchise in it."

A reading of the *Dartmouth College* case shows that the Pioneer Society's rights have been impaired by California; that it has thought to change the corporation and to take away from the corporations rights that were vested in it; that the actions of the state impaired the obligations of its contract, and violated due process of law. None of these arguments have been answered by Respondent. Invective and criticism have been substituted. This case involves fundamental rights affecting every private social corporation, lodge and fraternity in America. If the assets of the Pioneer Society can be stripped from it, then the assets of any other association can be stripped from it.

The obligation of contract have been impaired. The money has been taken from it without due process of law. It has been denied that right to revoke its inten-

tion to dissolve and its assets restored to it. It has been deprived of vested rights.

## REPLY OF THE INTERVENERS, THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

We have just received a reply brief of the Attorney General, Intervener, in this case.

Although he makes some complaint about not receiving a copy of the record, he participated in the trial, and in the appeals in the State Court, and has been personally present in the trial and appellate courts, and has had all records available to him. Furthermore, through the actions of the respondents ALL funds of Pioneer have been impounded. The opposition to our writ is not based on this ground. If this Court grants Certiorari, we will seek a court order to secure sufficient funds for the printing of the record.

The Attorney General also says we disregard the facts found by the trial court. Two different trial judges found two different sets of facts. The first trial judge found that the Pioneer moneys were not charitable funds. This judgment has never been set aside. It became final, a motion by Historical Society attorney to set it aside was denied and never appealed from. The second judgment contradicted the first. In the light of this record, the uncontradicted evidence must be looked to. That shows that Pioneer was and is a social order of Pioneer's meeting over tea, talking over

old times. No charity is displayed. The uncontradicted facts also show that the donor, as in the *Dartmouth College* case, gave the funds to Pioneer, with a specific contract to use it for a specific purpose. Although Historical Society was then in existence, none was given to that order. The State has no power to take it from Pioneer and give it to Historical. This Court must therefore choose between the findings of the first court that Pioneer is not a charitable corporation, and the second Court's findings construing it as a charitable corporation.

The construction last placed by the California Court upon Section 9801 of the California Corporation Code, declaring it to be a charitable corporation would impair the obligation of the contract between the State and Pioneer and between Pioneer and Mrs. Stoltenberg and her heirs. It would therefore be violative of article 1, section 10 of the U. S. Constitution as construed and applied. Its construction changes the nuber of directors and composition of Pioneer; it changes and impairs the obligation of contract of the gift of Mrs. Stoltenberg.

Where impairment of the obligation of contract are involved this court will examine for itself the nature and obligation of the contract and whether it is impaired.

*Angel v. Bullington*, 330 U. S. 183, 211.

No cases are cited by respondent in answer to our petition. It therefore conceded the authorities we have cited and the propositions therein presented.

The money was taken without due process of law.

If Pioneer's funds are trust funds Pioneer on revoking its determination to dissolve was and is entitled to its return.

We pray for Certiorari, and the return to Pioneer of its funds.

Respectfully submitted,

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